

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of

Lee S. WEINBLATT et al.

Serial No.: 10/690,085

Filed: October 20, 2003

For: TRANSMISSION OF AUDIENCE  
MONITORING DATA

Examiner: Dean, Raymond S.  
Group Art: 2618

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Commissioner for Patents  
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Alexandria, VA 22313-1450

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

SIR:

This is a Request for a Panel Review of Issues on Appeal. A Notice of Appeal is filed concurrently herewith in response to the final Office Action dated July 28, 2010. No amendments are being filed with this Request.

Arguments supporting the Request for Review begin on page 2 of this Request.

## ARGUMENTS

The matters to be reviewed are whether claims 1 and 2 are unpatentable under 35 USC § 103(a) over U.S. Pat. No. 5,382,970 ("Kiefl") in view of U.S. Pat. No. 5,630,203 ("Weinblatt") and U.S. Pat. No. 6,463,271 ("Schroeder"), and whether claims 3 and 4 are unpatentable over Kiefl in view of Weinblatt and U.S. Pat. No. 6,173,158 ("Hansen").

The Review Panel is respectfully directed to pages 7-8 of the Amendment filed May 17, 2010 and incorporated herein by reference for a summary of Applicants' disclosed embodiments.

Independent claim 1 recites, *inter alia*: "wherein the **portable** audience monitoring unit is configured to be **worn by the audience member during the broadcast program to detect the code signal**" that forms the broadcast signal in combination with a programming signal used to perform the program, which the art cited by the Examiner fails to teach or suggest. Independent claims 2-4 contain similar features.

The Examiner, in the Response to Arguments section at page 2 and the claim rejections at pages 2-3 and 6-7 of the final Office Action, relies on Kiefl as disclosing a portable audience monitoring unit that is configured to be worn by the audience member during the broadcast program to detect the code signals. The Examiner asserts that "The portable personal data meters in Kiefl being near the receiver and having the capability of being carried or worn by the user renders a scenario wherein the personal data meter is carried or worn by the user while said user is near the receiver thus rendering a scenario wherein the personal data meter is worn or carried by the user during the broadcast program to detect a code signal." However, as explained in detail below, such a required position adjacent to the television receiver for the personal data meter is not suitable for the audience member to view the broadcast program and, moreover,

renders the personal data meter non-portable for the duration of user viewing if the personal data meter is to be used for its intended purpose.

Kiefl discloses a technique for monitoring and collecting data on, for example, the viewing habits of television viewers. A typical remote control 10 is used for switching among the available channels, and it is relied upon in this monitoring technique to provide a channel identifier signal. The channel identifier signal is stored in memory 28 and eventually transferred by cellular phone module 31 to a central location 30.

Personal data meters 16, 17 and 18 are provided to detect the output signal of remote control 10. These data meters are described as being "simply placed adjacent the television receiver 15 so that each may receive any infrared signal 12 emitted by remote control 10." See col. 5, lines 44-47. Thus, the personal data meters are clearly and explicitly described as being not portable during user viewing, i.e., during a broadcast program.

The Examiner cites the Abstract of Kiefl as well as col. 2, lines 35-45 and col. 3, lines 22-26 of Kiefl in support of his position that Kiefl teaches portable personal data meters that can be carried or worn by a user. These portions of Kiefl (as well as the remainder of the description in Kiefl) teach that the personal data meters of Kiefl can be carried or worn by a user only when not in use. Kiefl fails to teach or suggest a personal data meter that is configured to be worn by the audience member while viewing a program to detect the output signal of remote control 10, i.e., during a broadcast program to detect a code signal.

If the personal data meters of Kiefl were to be worn during user viewing to detect the output signal of remote control 10 they would be rendered inoperable because the personal data meters of Kiefl must be placed adjacent to the television receiver. That is, the output signal of remote control 10 is relied upon for both switching the available channels at the television

receiver and the operation of the personal data meters. However, the laws of physics dictate that the infrared signal 12 of the remote control 10 in Kiefl cannot be received by both the television receiver and a personal data meter worn by the user. It is only through placement adjacent to the television receiver that the infrared signal 12 of the remote control 10 in Kiefl can be received by both the television receiver and units 16, 17 and 18.

Even assuming, *arguendo*, that an audience member can wear the personal data meter of Kiefl, such a required position adjacent to the television receiver for the personal data meter is not suitable for the audience member to view the broadcast program and, moreover, renders the personal data meter non-portable for the duration of user viewing if the personal data meter is to be used for its intended purpose. Kiefl therefore fails to teach or suggest “wherein the *portable* audience monitoring unit is configured to be *worn by the audience member during the broadcast program to detect the code signal*” that forms the broadcast signal in combination with a programming signal used to perform the program, as expressly recited by Applicants’ independent claim 1.

Even assuming, *arguendo*, the propriety of the Examiner’s proffered combination of Kiefl, Weinblatt, Schroeder and/or Hansen (which Applicants expressly refute in the Response filed June 29, 2009 and incorporated herein by reference), Weinblatt, Schroeder and Hansen fail to cure the deficiencies of Kiefl discussed above with respect to claim 1. The system of Kiefl, the principle of operation of which relies on personal data meters that must be placed adjacent to the television receiver to be used in conjunction with a locally generated signal which is manually actuated by the audience member, i.e., from a remote control, cannot employ a portable audience monitoring unit configured to be worn by an audience member during a broadcast program because such a modification would render the locally generated signal impotent and the

overall system inoperable. Moreover, Kiefl's principle of operation is clearly different from Weinblatt's principle of operation that relies on portable monitoring units worn by the audience members and a signal which originates at the broadcasting station and is automatically reproduced locally with no intervention by the audience member. Weinblatt fails to cure the deficiencies of Kiefl discussed above with respect to claim 1, and the skilled artisan would not and could not modify the system of Kiefl to include the features of Weinblatt's technique. Kiefl and Weinblatt therefore fail to disclose teach or suggest "wherein the portable audience monitoring unit is configured to be worn by the audience member during the broadcast program to detect the code signal" that forms the broadcast signal in combination with a programming signal used to perform the program, as expressly recited by Applicants' independent claim 1.

Schroeder and Hansen fail to bridge the gap between claim 1 and the combination of Kiefl and Weinblatt. There is nothing in Schroeder or Hansen which even hints at the above-mentioned claimed features of the present invention that are missing in the other applied references.

Accordingly, independent claim 1 is deemed to be patentable over the applied prior art.

Independent claims 2-4 recite features similar to claim 1 and are therefore also deemed to be patentable over the applied prior art for reasons discussed above with respect to claim 1.

### CONCLUSION

In view of the foregoing, Applicants believe that the present application is now in proper condition for allowance. Prompt and favorable action to this effect and early passing of this application to issue are respectfully solicited.

Respectfully submitted,  
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Dated: December 28, 2010